IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, v. BRAYAN DE LA CRUZ CUAHUTZIHUA, Defendant.	**8:23CR62** **ORDER ON** **INITIAL REVIEW**

On May 10, 2024, defendant Brayan De La Cruz Cuahutzihua ("De La Cruz Cuahutzihua") pleaded guilty pursuant to a written plea agreement (Filing No. 115) to conspiring to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. *See* 21 U.S.C. §§ 846, 841(b)(1)(A). On August 2, 2024, the Court accepted De La Cruz Cuahutzihua's guilty plea and sentenced him to 168 months in prison followed by 5 years of supervised release. His final sentence included a downward variance of 42 months from the bottom of his United States Sentencing Guidelines advisory range of 210 to 262 months (level 37, category I).

Now before the Court is De La Cruz Cuahutzihua's *pro se* Motion for Writ of Habeas Corpus under 28 U.S.C § 2255 (Filing No. 214). As primary grounds for relief, he alleges ineffective assistance of counsel, invalid plea, prosecutorial misconduct, and an Eighth Amendment violation. He asks that the Court vacate or reduce his sentence or appoint counsel and hold an evidentiary hearing.

Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires the Court to complete an initial review of De La Cruz Cuahutzihua's § 2255 motion. Unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief,"

the Court must order the United States Attorney to respond to the motion or "take other action the judge may order." *Id.*

Upon initial review, the Court finds summary dismissal is not warranted in this case. The United States Attorney must therefore answer or otherwise respond to De La Cruz Cuahutzihua's motion on or before July 31, 2025.

IT IS SO ORDERED.

Dated this 30th day of June 2025.

BY THE COURT:

Robert F. Rossiter, Jr.
Chief United States District Judge